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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,529	01/22/2002	Guido Baumoller	4002-1002-1	8987

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EXAMINER

HOWARD, SHARON LEE

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/051,529	BAUMOLLER ET AL.	
	Examiner	Art Unit	
	Sharon L. Howard	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16 and 17 is/are allowed.
- 6) ☒ Claim(s) 14, 15, 18-22, 25, 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8</u> | 6) <input type="checkbox"/> Other: _____ |

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The examiner acknowledges the IDS filed on 6/24/04.

Status of the Claims

Claims 1-13 have been cancelled.

Claim 14 is currently amended.

Claims 14-26 are pending.

Specification

The amendment filed 7/23/03 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "wherein the treated fibrous web has a water absorption time of less than one minute".

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14,15,18-22 and 25-26 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Luu et al. (U.S. Patent No. 5,871,763).

Luu teaches treating a substrate (i.e. tissue, napkin or towel) with a lotion composition (see abstract and col.1, lines 6-13) comprising 10% or less water (see col.4, lines 3-5). Luu teaches oils such as PEG-40 castor oil (col.7, line 7), lanolin,

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triglycerides, alkyl fatty acid esters (see col.7, lines 43-46). Luu also discloses that the lotion composition can include an emollient such as isostearyl neopentanoate (col.8, line 62), as well as other optional ingredients such as olive oil, sesame oil, mink oil, animal oil, botanical extracts such as basil extract, eucalyptus extract and chamomile extract (col.12, lines 64-67, bridging col.13, lines 1-9) and a humectant. Luu teaches that the botanical extract, humectant or animal oil is present in an amount of less than about 3 percent when used in the base composition. Luu also discloses a skin refresing agent such as encapsulated water in oil, mentol oil and eucalyptus oil (col.13, lines 9-18), and that the lotion can contain also a surfactant, namely a polyol ester which emulsifies the lotion (col.8, lines 63-67, col.9, lines 1-17).

Luu does not specifically teach an oil-in-water emulsion.

However, absent a showing in the criticality of oil-in-water emulsion, there are no unexpected results, since the prior art permits water (see col.4, lines 3-5) and has a variety of oils disclosed (see col.7, lines 43-44, col.12, lines 64-66).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the composition taught by Luu, because Luu teaches a lotion composition comprising water and an oil, a humectant and a surfactant which emulsifies the lotion, which is useful for the purpose of imparting a smooth, lubricious and non-greasy feeling when the substrate is applied to the skin. One would expect similar beneficial results.

Claims 23 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16 and 17 are allowed.

Response to Arguments

Applicant's arguments filed 5/19/04 have been fully considered but they are not persuasive. Applicant argues that the Luu et al. reference simply fails to disclose or suggest any technique that would lead a person having ordinary skill in the art to the herein claimed lotioned fibrous web which exhibits the surprisingly low water absorption times of less than one minute, and simultaneously carries a lotion which shows good stability, the capacity to transfer lotion to the skin of the user, and a pleasant feel on the skin.

In response to applicant's argument, Luu does teach a pleasant feel on the skin, thereby providing a smooth, lubricious, nongreasy-feeling layer on the skin of the user (see col.1, lines 6-13). The invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made and the rejection is maintained for reasons of record.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

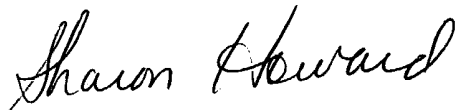
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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

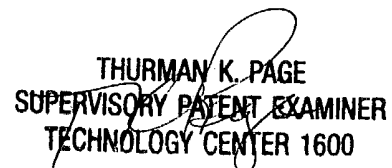
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Howard whose telephone number is (703) 308-4359, and the new number will be (571) 272-0596 after 2/2/04. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927 and after 2/2/04, (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.



Sharon Howard
September 17, 2004



THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600